



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159864

PRELIMINARY RECITALS

Pursuant to a petition filed August 13, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on September 18, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly pro-rated the Petitioner's August 2014 FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Representative
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On May 19, 2014, the agency sent the Petitioner a notice that she needed to complete a Six Month Report Form (SMRF), if she wanted to continue receiving Foodshare benefits. (Exhibit 2)

3. On June 23, 2014, the agency sent the Petitioner the SMRF with instructions to complete the form by July 5, 2014. (Exhibit 8)
4. On July 18, 2014 the agency sent the Petitioner a notice advising her that her FoodShare benefits would be ending, effective August 1, 2014, because she had not completed the SMRF. (Exhibit 3)
5. The Petitioner returned the SMRF on July 30, 2014. However, she neglected to complete sections 4 and 5 of the SMRF, which ask questions about household income. (Exhibit 4)
6. The agency returned the SMRF to the Petitioner for completion. (Testimony of Ms. Mayer)
7. The Petitioner answered the questions in Sections 4 and 5, and returned the SMRF to the agency on August 7, 2014. (Exhibit 6)
8. On August 11, 2014, the agency sent the Petitioner a notice indicating that as of August 7, 2014, her FoodShare benefits would be \$400.00 and that as of September 1, 2014, she would receive \$497.00 per month in FoodShare benefits. (Exhibit 7)
9. The Petitioner filed a request for Fair Hearing that was received by the Division of Hearings and Appeals on August 11, 2014. (Exhibit 1)

DISCUSSION

“Food units certified for 12 months, and subject to reduced change reporting requirements are required to submit a six month report form (SMRF) in the sixth month of the certification period.” *FoodShare Wisconsin Handbook (FSH) §6.1.2* “To be considered timely, a SMRF must be returned to the local agency by the fifth day of the process month (month 6). If the [household] fails to return a timely SMRF, FS FoodShare will close effective the last day of the process month...” *Id.* If the household submits a late SMRF, the case may re-open in the 7th month without a new application, but benefits will be prorated from the date all SMRF requirements are met, including verification. *FSH §6.1.2*

In the case at hand, the Petitioner filed an appeal because she does not believe her benefits for August 2014 should be prorated.

The Petitioner’s SMRF was due July 5, 2014. She did not submit a complete SMRF until August 7, 2014, during the 7th month of her certification period. Consequently, the agency correctly pro-rated the Petitioner’s FoodShare benefits.

It should also be noted that when there is an under-issuance of FoodShare benefits, the agency may only restore the benefits, if the individual/food group did not cause the under-issuance and if the under-issuance occurred 12 months before it was discovered. *FHS §7.4.1.1*

In this case the Petitioner caused the under-issuance of FoodShare benefits, because she did not timely complete her SMRF as required. Consequently, the agency may not backdate her FoodShare benefits to August 1, 2014.

The Petitioner makes the equitable argument that the rules should not apply to her, because she was ignorant of the rules. The Petitioner explained that when she applied for benefits in January 2014, she thought the agency had the information it needed and so, she didn’t think the notices that she received in May and June regarding the SMRF meant anything. However, the rules must be applied to be Petitioner, because Administrative Law Judges do not have equitable authority and must follow the law as it is written.

CONCLUSIONS OF LAW

The agency correctly pro-rated the Petitioner’s FoodShare benefits per *FSH §6.1.2*.

THEREFORE, it is

ORDERED

The petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

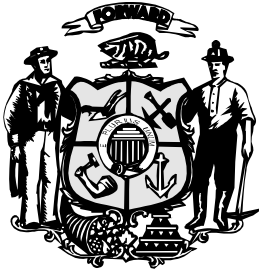
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of October, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 1, 2014.

Kenosha County Human Service Department
Division of Health Care Access and Accountability